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09/924,132	08/08/2001	Wayne A. Himes		3045

7590 01/02/2004
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EXAMINER

CONLEY, SEAN E

ART UNIT PAPER NUMBER

1744

DATE MAILED: 01/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,132

Applicant(s)

HIMES, WAYNE A.

Examiner

Sean E Conley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on October 1, 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 11, 18, 19 and 21-26 is/are allowed.
- 6) ☒ Claim(s) 1, 9, 12 and 20 is/are rejected.
- 7) ☒ Claim(s) 2-8 and 13-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment and affidavit filed October 1, 2003 have been received and considered for examination. Claims 1, 8 and 9 have been amended and new claims 12-26 have been added. Claims 1-26 are now pending.

The affidavit filed on October 1, 2003 under 37 CFR 1.131 is sufficient to overcome the Ellis reference.

The request by the applicant of the selection of Fig. 3 as the "Suggested Drawing Figure" depicted on the patent "front page" and selected for publication in the Official Gazette is acknowledged.

The title has been amended as requested by the applicant.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 12 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Acosta, Sr. et al. (U.S. Pat. 5,165,181).

Acosta, Sr. et al. disclose a device for drying and deodorizing shoes. The device includes a container means (1) having a top (6) and bottom (7) and at least four sides

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cooperating to define an inner space. The inner space includes at least one clothing storage area and a shelf (12) for receiving articles of clothing such as shoes to be conditioned by drying and deodorizing. The inner space further includes at least one moveable compartment means located in drawer (18) for the placement of a deodorizing packet (18c). Deodorizing packet (18c) is made from a material impregnated with a perfuming agent activated by hot air. The moveable compartment means additionally has at least one panel means (18b) serving to separate said movable compartment means from the at least one clothing storage area. The panel means (18b) is a mesh screen provided with passages for permitting scent-laden air to circulate to the clothing storage area. When the compartment means is to be filed with a scent source material, the drawer including the at least one panel means (18b) is moved to a first position wherein the scent-source materials are positioned inside the drawer. Then, the drawer is moved to a second position so that the scent-source materials are positioned adjacent to the clothing. The container (1) also includes a door (22) for closing off the inner space from the outside environment (see figures 1-2 and col. 2, line 55 to col. 4, line 33).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Acosta, Sr. et al. (U.S. Pat. 5,165,181) in view of Ricci.

Acosta, Sr. et al. (Acosta) discloses a device for drying and deodorizing shoes. The device includes a container means (1) having a top (6) and bottom (7) and at least four sides cooperating to define an inner space. The inner space includes at least one clothing storage area and a shelf (12) for receiving articles of clothing such as shoes to be conditioned by drying and deodorizing. The inner space further includes at least one moveable compartment means located in drawer (18) for the placement of a deodorizing packet (18c). Deodorizing packet (18c) is made from a material impregnated with a perfuming agent activated by hot air. The moveable compartment means additionally has at least one panel means (18b) serving to separate said movable compartment means from the at least one clothing storage area. The panel means (18b) is a mesh screen provided with passages for permitting scent-laden air to circulate to the clothing storage area. The container (1) also includes a door (22) for closing off the inner space from the outside environment (see figures 1-2 and col. 2, line 55 to col. 4, line 33).

Acosta does not specifically disclose a natural scent-source material located in the moveable compartment means.

Ricci discloses a fragrance sack for selectively scenting the surrounding area. The sack includes a scenting element formed of an absorbent material that is impregnated with a scented oil. The fragrance sack may be placed on a shelf as shown in figure 4 to add pleasant scent to items of clothing stored in a closet, or in a drawer as depicted in figure 5. Additionally, Ricci discloses that it is well known to make fragrance sacks that include a scent carrying material such as rose petals or dried herbs which emit a characteristic smell (see column 1, lines 30-40).

Therefore, it would have been obvious to one of ordinary level of skill in the art at the time the invention was made to modify the invention of Acosta and replace the deodorizing packet with a alternative fragrance dispensing means such as a natural fragrance material of rose petals or dried herbs as taught by the disclosure of Ricci, since both inventions are directed to conditioning articles of clothing in confined spaces.

Additionally, in claim 9, the phrase "hunting clothing and related gear" is not given patentable weight. This phrase recites the intended use of the device and intended use is not given weight in an apparatus claim. The device as claimed is capable of conditioning all types of articles and the phrase "hunting clothing and related gear" does not further limit the apparatus.

Applicant's Arguments

7. The applicant's arguments are listed below:

- The word "wire-like" enjoys well-established meaning in the English language and with definite meaning in the mechanical arts. "Wire-like" is evidenced as solidly part of the industrial lexicon both outside and within the US Patent and Trademark Office (USPTO).
- Regarding the rejection of claims 1, 5 and 9 as being unpatentable over Ellis in view of Ricci, the applicant argues that "...rose petals and dried herbs are well known among the myriad of typical scent-source materials that convey, impose or transfer a pleasant, though contextually unnatural fragrances. This, however, is in no way consistent with the context of conditioning hunting clothing and related gear contemplated in the Applicant's invention. In fact, conditioning clothing and gear to please humans is clearly contrary to the objectives of the present invention." The applicant also recites further deficiencies of the Ellis reference with regards to the structure of the invention.

Response to Arguments

8. In response to the applicant amending the detailed description of the invention to include the word "wire-like" and further in view of the evidence provided by the applicant, the rejection of claims 4 and 6 under 35 U.S.C. 112, 2nd paragraph has been withdrawn.

9. Applicant's arguments with respect to claims 1, 5 and 9 have been considered but are moot in view of the new ground(s) of rejection. Specifically, the applicant's arguments are moot because the affidavit filed October 1, 2003 has disqualified the Ellis reference as prior art. The newly applied rejection above of Acosta, Sr. et al. in view of Ricci teaches the applicants claimed invention as recited in claims 1 and 9.

Furthermore, regarding the applicant's arguments of the application of the Ricci reference, the examiner respectfully disagrees for the following reasons. First, the

examiner would like to point out to the applicant that with an apparatus claim, the intended use of the device is not given patentable weight. Therefore, in the present application the specific type of article of clothing to be conditioned by the claimed device is not given patentable weight. Secondly, the term "conditioning" can be interpreted very broadly to include using rose petals and herbs to fragrance an article of clothing as cited in the above rejection of the claims under 35 USC 103. Therefore, although the applicant states that "conditioning clothing and gear to please humans is clearly contrary to the objectives of the present invention", the term "conditioning" has been interpreted such that the claims are obvious over Acosta, Sr. et al. in view of Ricci.

Allowable Subject Matter

10. Claims 10, 11, 18-19 and 21-26 are allowed. Claims 10 and 11 were allowed in the office action dated July 11, 2003.

11. The following is an examiner's statement of reasons for allowance: The closest prior art to the applicant's claimed invention are the references to Acosta and Knight (U.S. Pat. 5,776,378).

Acosta, Sr. et al. (Acosta) discloses a device for drying and deodorizing shoes. The device includes a container means (1) having a top (6) and bottom (7) and at least four sides cooperating to define an inner space. The inner space includes at least one clothing storage area and a shelf (12) for receiving articles of clothing such as shoes to

be conditioned by drying and deodorizing. The inner space further includes at least one moveable compartment means located in drawer (18) for the placement of a deodorizing packet (18c). Deodorizing packet (18c) is made from a material impregnated with a perfuming agent activated by hot air. The moveable compartment means additionally has at least one panel means (18b) serving to separate said movable compartment means from the at least one clothing storage area. The panel means (18b) is a mesh screen provided with passages for permitting scent-laden air to circulate to the clothing storage area. The container (1) also includes a door (22) for closing off the inner space from the outside environment (see figures 1-2 and col. 2, line 55 to col. 4, line 33).

Knight teaches a method and apparatus for applying scent to clothing. The device includes an enclosed compartment having a top, bottom and side walls. A horizontal perforated shelf extends across the compartment and divides the compartment into upper and lower portions. An air circulation conduit connects upper and lower portions of the compartment. A fan is connected to the conduit for moving air from the upper portion to the lower portion and a scent cartridge is in communication with the conduit. The air passing through will pick up the scent passing it to the lower portion and then through the perforated shelf supporting the clothing.

However, The prior art to Acosta and Knight, alone or in combination, fail to teach or suggest the a panel comprising passages formed of a frame structure to which a wire mesh is attached, wherein the panel fits within the lid of the container and

is positioned adjacent to the lid in order to form a compartment that contains natural scent-source materials thereby separating the materials from the articles of clothing.

Additionally, the cited prior art fails to teach or suggest a device with a clothing article support panel comprising passages for scent laden air and furthermore, positioned adjacent to the bottom of the container, but spaced from the bottom in order to define a compartment where natural scent-source materials are contained.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

12. Claims 2-8 and 13-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claims 5-8, the prior art fails to teach or disclose a panel comprising passages formed of a frame structure to which a wire mesh is attached, wherein the panel fits within the lid of the container and is positioned adjacent to the lid in order to form a compartment that contains natural scent-source materials thereby separating the materials from the articles of clothing.

Regarding claims 2-4 and 13-17, the prior art fails to teach or suggest a device with a clothing article support panel comprising passages for scent laden air to pass and furthermore, positioned adjacent to the bottom of the container, but spaced

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from the bottom in order to define a compartment where natural scent-source materials are contained.

Conclusion

13. Applicant's amendment and affidavit necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. 6,263,591 B1 to La Porte

U.S. Pat. 6,062,416 to Smillie

Patent Application Pub. US 2003/0012680 A1 to Balsys

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean Conley, whose telephone number is (703) 305-2430. Beginning December 16, 2003, the examiners phone number will change to (571) 272-1273. The examiner can normally be reached on Monday-Friday 8:00 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Robert Warden, can be reached at (703) 308-2920. The Unofficial fax phone number for this group is (703) 305-7719. The Official fax phone number for this Group is (703) 872-9310. The direct fax number to the examiner is (703)-746-8859. Beginning December 16, 2003, the direct fax to the examiner will change to (571) 273-1273.

When filing a FAX in Technology Center 1700, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communications with the PTO that are not for entry into the file of the application. This will expedite the processing of your papers.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [robert.warden@uspto.gov]. All Internet e-mail communications will be made of record in the application file. PTO employees will not communicate with applicant via internet e-mail where sensitive data will be exchanged

or where there exists a possibility that sensitive data could be identified unless there is of record express waiver of the confidentiality requirements under 35 U.S.C. 122 by the applicant. See the Interim Internet Usage Policy published by the Patent and Trademark Office Official Gazette on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist, whose telephone number is (703) 308-0661.

Sean E. Conley
Patent Examiner
AU 1744

SEC *Se*
December 19, 2003

Robert J. Warden, Sr.
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